

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARCUS ANDRE GARNER,  
Plaintiff,  
v.  
RICK HILL, *et al.*,  
Defendants.

Case No. 2:23-cv-00494-WBS-JDP (PC)

ORDER

Defendant Warden Rick Hill removed this action from Sacramento County Superior Court. ECF No. 1. Plaintiff is a prisoner proceeding pro se. The court screened plaintiff's complaint and notified him that it failed to allege a cognizable claim. ECF No. 9. After two extensions of time, plaintiff filed his first amended complaint. ECF No. 14. Before the court had an opportunity to screen the amended complaint as required by 28 U.S.C. § 1915A, defendant Hill filed a motion to dismiss. ECF No. 15. Plaintiff has filed a motion for an extension of time to respond to Hill's motion. ECF No. 16. Both motions are denied.

The court is required to screen all actions brought by prisoners who seek relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A. This obligation applies to amended complaints. *See Rios v. Dragon*, No. 2:20-cv-00146-ADA-HBK (PC), 2022 WL 11324595, at \*2 (E.D. Cal. Oct. 19, 2022) ("Screening orders are also appropriate

1 on amended complaints.”). As the court has yet to screen plaintiff’s amended complaint,  
2 defendant Hill’s motion to dismiss is denied as premature. *See Gibbons v. Arpaio*, No. cv 07-  
3 1456 PHX SMM (JCG), 2007 WL 2990151, at \*2 (D. AZ. Oct. 11, 2007) (denying a motion to  
4 dismiss as premature because the court had not screened the complaint); *Rodriguez v. Taiarol*,  
5 No. 2:21-cv-1958-DB (P), 2023 WL 2432490, at \*1 (E.D. Cal. Mar. 9, 2023) (same). The court  
6 will screen the first amended complaint in due course and defendant may renew his motion to  
7 dismiss if appropriate.

8 Accordingly, it is hereby ORDERED that:

- 9       1. Defendant Hill’s motion to dismiss, ECF No. 15, is denied without prejudice to  
10 renewal after the court has screened the amended complaint.  
11       2. Plaintiff’s motion for an extension of time, ECF No. 16, is denied as moot.

12 IT IS SO ORDERED.  
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14 Dated: September 14, 2023

  
15 JEREMY D. PETERSON  
16 UNITED STATES MAGISTRATE JUDGE

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